

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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EFFINGHAM JAMES,

Plaintiff,

**SUPPLEMENTAL
REPORT AND
RECOMMENDATION**

- against -

CV-05-2593 (TCP)(AKT)

ODRA N. ARANGO, A&A GLOBAL
RESOURCES INC., aka A&A GLOBAL
RESOURCES LTD., ANN ALVAREZ,
ALFRED MILLS, DISCOUNT FUNDING
ASSOCIATES, WALLY DUVAL

Defendant.

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A. KATHLEEN TOMLINSON, Magistrate Judge:

This matter was initially referred to me by District Judge Platt for a Report and Recommendation to determine whether the then-pending motion for default judgment should be granted, and to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded based upon such determination. DE 93. On March 28, 2011, I entered my Report and Recommendation, recommending to Judge Platt that a default judgment be entered and that damages be awarded to the Plaintiff. As part of his damages, I recommended that Plaintiff be awarded the equity value he held in his property at the time of the underlying transfer in May 2002. However, in support of his damages award, Plaintiff had submitted an appraisal showing the value of his property in August 2010. Because the Court could not base a damage award on the value of the property in 2010, I recommended that Plaintiff be permitted to supplement his motion for damages with the appropriate appraisal. Judge Platt adopted the Report and Recommendation in its entirety and gave Plaintiff sixty days to file the amended appraisal.

DE 118.

On June 22, 2011, Plaintiff submitted an amended appraisal. DE 119. Judge Platt directed me to submit this Supplemental Report and Recommendation to determine the amount of damages Plaintiff should be awarded for the value of his property.

As noted in the initial Report and Recommendation, the equity value Plaintiff had in his property is to be calculated by subtracting the amount due on Plaintiff's mortgage at the time of the transfer from the market value of the home at the time of the transfer. DE 115 at 19. Plaintiff has submitted a 14-page appraisal report prepared by a certified real estate appraiser, Yuri Aminov, which assesses the value of the property as of May 2002 at \$251,000.00. DE 119, Ex. 2. Plaintiff has also submitted the settlement statement (HUD-1) from the closing of the transaction on May 29, 2002. DE 109, Ex. 15. The settlement statement shows that at the time of the closing, Plaintiff owed \$156,481.01 on his mortgage. Thus, the value of equity that Plaintiff had in his property at the time of the closing in 2002 was \$94,518.99 (\$251,000 minus \$156,481.01).

Having considered the Plaintiff's submission, I respectfully recommend to Judge Platt that, in addition to the damages recommended in my previous Report and Recommendation (i.e., \$33,930 compensatory damages and costs in the amount of \$6,091), Plaintiff be awarded damages in the amount of \$94,518.99 for the value of his property.

Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 72 of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. *See also* Fed. R. Civ. P. 6(a) and (e). Such objections shall be filed with the Clerk of the Court via ECF. A courtesy copy of any objections filed is to be sent to the chambers of the Honorable Thomas C. Platt, and to the chambers of the undersigned. Any requests for an extension of time for filing objections must be directed to Judge Platt prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Beverly v. Walker*, 188 F.3d 900, 901 (2d Cir. 1997), *cert. denied*, 522 U.S. 883 (1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Counsel for the Plaintiff is directed to serve a copy of this Supplemental Report and Recommendation on the Defendants forthwith and to file proof of service on ECF.

SO ORDERED.

Dated: Central Islip, New York
August 9, 2011

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge